



# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Acting Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

Public

February 10, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jamal Janania, M.D.  
c/o Brian M. Melber, Esq.  
Personius, Melber LLP  
2100 Main Place Tower  
Buffalo, New York 14202-3750

Paul Tsui, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Jamal Janania, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-029) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Riverview Center  
150 Broadway – Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Jamal Janania, M.D. (Respondent)

A proceeding to review a Determination by a Committee  
(Committee) from the Board for Professional Medical  
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 15-029

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Paul Tsui, Esq.  
For the Respondent: Brian M. Melber, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by intentionally submitting applications that contained false information to two hospitals. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2015), the Respondent asks the ARB to overturn the revocation and to reduce the penalty to a suspension, followed by probation, with terms that include treatment and supervision. After reviewing the record below and the parties' review submissions, the ARB votes 5-0 to affirm the Committee's Determination to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(14) & 6530(20-21) (McKinney Supp. 2015) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,

- violating the provisions under PHL § 2805-k relating to investigations prior to granting or renewing privileges at a medical facility,
- engaging in conduct that evidences moral unfitness, and,
- willfully making or filing a false report by law or by the Department of Health or the State Education Department.

The charges related to applications the Respondent submitted for staff appointment and/or medical privileges at Lewis County General Hospital (Lewis Application), Oswego Hospital (Oswego Application) and Orleans Community Health (Orleans Application) and a curriculum vitae the Respondent submitted for employment by Mountain Medical Services (Mountain Curriculum). Following a hearing on the charges, the Committee rendered the Determination now on review.

The Committee dismissed the factual allegations concerning the Orleans Application and the Mountain Curriculum and the Committee dismissed the misconduct specifications charging that the Respondent engaged in conduct that evidenced moral unfitness. The Committee sustained the specifications that alleged that the Respondent practiced fraudulently, willfully filed a false report and violated PHL § 2805-k in answers the Respondent made on the Lewis and Oswego Applications. The Committee found that the Respondent:

- was suspended and then terminated from employment at Carthage Area Hospital (Carthage) in September 2011 for issues relating to performance, record keeping, tardiness and absences;
- was terminated by Mountain Medical Services (Mountain) in May 2012 for performance issues including record keeping, time and attendance;
- applied for, but was denied, a medical license in Kansas in 2006 for failure to meet licensing requirements;
- was reported to the National Practitioner Data Bank (NPDB) due to the Kansas license denial and knew about the report;
- was arrested in Leominster, Massachusetts in March 2010 on the charge of misdemeanor assault, which was later dismissed; and,

- held a license to practice medicine in Florida in 2012.

On the Lewis Application, the Committee found that the Respondent submitted the Application in April 2012 and that the Respondent:

- denied falsely that his employment or practice at another facility had ever been limited, suspended or discontinued;
- denied falsely that his privileges at any facility had ever been denied, discontinued or suspended; and,
- failed to disclose the denial of the Kansas license, when asked if he was ever denied membership in any medical organization.

The Respondent made no challenge to the factual allegations concerning the Lewis Application.

On the Oswego Application, the Committee found that the Respondent submitted the Application on June 11, 2012 and that the Respondent:

- denied falsely that he had ever been subjected to suspension, revocation or denial of employment privileges at any hospital or health care related institution;
- denied falsely that he was or had been subjected to formal investigation, corrective action or discipline by any hospital or health related facility;
- answered no falsely when asked if he was or had been subject to criminal convictions, pending criminal proceedings or arrests for felonies or misdemeanors;
- denied falsely that he was subject to any clinical privileges ever being revoked, suspended or not renewed at any facility;
- denied that an application for medical staff membership or privileges was pending at any other facility;
- denied falsely that he had ever been reported to the NPDB; and;
- failed to disclose, when asked to list all his medical licenses, that he has a Florida medical license.

The Respondent admitted to some false statements on the Oswego Application, but he contested charges the Committee sustained concerning the arrest and the Florida license. The Respondent

explained that he denied the arrest because there was no conviction and that he failed to mention the Kansas license due to oversight. The Committee accepted neither explanation.

In the section in their Determination discussing the appropriate penalty for the Respondent's misconduct, the Committee's considered an evaluation by a psychologist, Dr. Ewing [Hearing Exhibit M]. The Appellant underwent the evaluation prior to the hearing. Dr. Ewing found that the Respondent needs psychiatric help. The Committee's Determination noted that Dr. Ewing, whom the Respondent had engaged for the hearing, was unable to say whether the Respondent had been obtaining the appropriate assistance or had any intention of obtaining the appropriate assistance he needs in order to address the issues that resulted in the poor employment record and the Respondent's repeated decisions to lie about the record.

The Committee voted to revoke the Respondent's License. The Committee expressed concerns that the Respondent's misrepresentations on the Applications, even about minor matters such as the Florida license, brought into question the Respondent's reliability in matters more directly related to patient care. The Committee noted that prospective employers are entitled to know about terminations, arrests and licensure denials to be able to make decisions about a physician's suitability for employment. The Committee found that the Respondent received many chances to do something about his deficiencies, but has done nothing. The Committee noted that the Respondent's prior employers, Carthage and Mountain, had tried to work with the Respondent, but after repeated efforts, including suspensions, the result has repeatedly been termination. The Committee found that the Respondent is on the same path with his current employment. The Committee also found the record devoid of any indication the Respondent's past employment experiences have made any difference. The Committee concluded that nothing has changed and that there was no reason to believe that the Respondent takes seriously the dismal employment record that his lies have attempted to hide and no reason to believe that any penalty short of revocation could address the problems underlying the Respondent's misconduct.

### Review History and Issues

The Committee rendered their Determination on November 4, 2014. This proceeding commenced on November 18, 2014, when the Respondent submitted a Notice requesting Administrative Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on January 8, 2015.

The Respondent requested that the ARB reduce the sanction in this case from revocation to an actual suspension, followed by probation with treatment and supervision to address the underlying conditions that gave rise to the misconduct. The Respondent argued that his misconduct resulted from depression and attention deficit disorder (ADD), rather than a deficit of character or a lack of competence as a physician. The Respondent stated that his medical conditions had not been recognized, treated and managed adequately in the past, but the conditions can be addressed successfully now and in the future. The Respondent asked the ARB to consider that:

- this case involved was no patient harm;
- the Respondent has acknowledged his misconduct and expressed genuine remorse;
- the misconduct resulted from treatable conditions and the Respondent is willing to obtain and continue the necessary treatment to address the conditions;
- the Respondent provides primary care in a rural clinic with an underserved population; and,
- prior disciplinary cases support probation with treatment and supervision over revocation in the facts and circumstance at issue in this case.

The Respondent proposed that the ARB modify the penalty to six months actual suspension, three years stayed suspension and three years on probation. The probation would require continued treatment with reporting, maintaining current and complete medical records and practice with a monitor.

The Petitioner replied that the Respondent continues to minimize his conduct and fails to accept responsibility for his actions. The Petitioner noted that the Respondent only saw Dr. Ewing on the eve of the hearing and that the Respondent was given multiple opportunities and chances to rectify his situation and get help in the past. In response to the Respondent's contention that prior disciplinary cases supported treatment and probation, rather than revocation in cases with similar facts as those at issue here, the Petitioner argues the ARB and the courts have found previously that revocation constitutes the appropriate penalty for misconduct restricted solely to making false statements on applications for hospital privileges, Matter of Ross v. State Board for Professional Medical Conduct, 45 A.D.3d 927, 845 N.Y.S.2d 162 (3<sup>rd</sup> Dept. 2007). The Petitioner argued that the Committee received the best opportunity to review and assess the Respondent's testimony and demeanor and the Petitioner asks that the ARB sustain the Committee's Determination.

#### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL ' 230-a permits. The ARB may



substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct. Neither party challenged the Committee's findings on the factual allegations and misconduct specifications. The ARB votes 5-0 to affirm the Committee's Determination to revoke the Respondent's License.

The Respondent argued that he has acknowledged his misconduct, which resulted from treatable conditions, and that he will obtain and continue treatment for those conditions. The ARB finds those arguments unconvincing. The Committee found no reason to believe that the Respondent was serious about obtaining treatment for ADD and depression. The Committee noted that the Respondent had chances at both Carthage and Mountain to deal with his problems and he failed to take advantage of those chances. The Committee also noted that the Respondent had received no psychiatric treatment in the previous two years, that he saw Dr. Ewing only on the eve of the hearing and that Dr. Ewing's report was unable to say whether the Respondent had been obtaining the appropriate assistance or had any intention of obtaining the appropriate assistance he needs. The ARB agrees with the Committee's view that it is pointless to direct a physician to get help if the physician is unwilling to do so. Even if the Respondent does receive treatment for ADD and depression, the ARB sees no reason to believe that the Respondent would become any more trustworthy. The Respondent's conduct demonstrated that he lacks integrity. Treatment for ADD and depression might assist the Respondent's record keeping and attendance, it will not instill in the Respondent the integrity that he lacks.

The Respondent argued further that he caused no patient harm and that he works in an under-served rural community. The record noted that both Carthage and Mountain terminated the Respondent for failure to complete medical records and for time/attendance problems. A medical record must provide a complete picture of a patient's conditions and treatments to a subsequent treating physician. The failure to complete medical record can affect patient care. Failure by a physician to appear for work can stretch resources in an already under-served area and can threaten patient care as well. The Committee noted that the Respondent continues to experience problems with record keeping at his current employment and has been taken off the patient schedule to catch up with his record keeping, Once again, the Respondent's deficiencies are stretching the resources in an already under-served area.

Finally, the Respondent argued that disciplinary actions in similar cases have supported probation and treatment as a sanction rather than revocation. The ARB disagrees. We have ruled previously that fraud in applications to health care facilities, standing alone, provides the grounds for revoking a physician's license, Matter of Ross v. State Board for Professional Medical Conduct (supra). A physician must deal honestly with patients, other health care providers, health care facilities, insurers and regulators. The physician credentialing system, including PHL § 2805-k, requires physicians to answer questions truthfully and completely on applications for employment or privileges at health care facilities, so those facilities can decide whether to entrust patients to that physician's care.

The Respondent received chances from his prior employers to correct his performance problems. The Respondent failed to take advantage of those chances and he failed to learn from his past mistakes. He now faces similar performance issues at his current job and he sought the evaluation with Dr. Ewing only on the eve of the hearing. The Respondent has chosen to deal

with his employment history by lying about that history. The ARB agrees with the Committee that revocation provides the only appropriate sanction for the Respondent's misconduct.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

To:

Paul Tsui, Esq.  
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2100 Main Place Tower  
Buffalo, NY 14202-3750

In the Matter of Jamal Janania, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Janania.

Dated: February, 2015



Linda Prescott Wilson

In the Matter of Jamal Janania, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Janania.

Dated: January 30, 2015

A black rectangular redaction box covers the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Jamal Janania, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Janania.

Dated: 1/30/ 2015



Steven Grabiec, M.D.



In the Matter of Jamal Janania, M.D.

Richard D. Milone, M.D. an ARB Member concurs in the Determination and Order in the

Matter of Dr. Janania.

Dated February 3, 2015



Richard D. Milone, M.D.

In the Matter of Jamal Janania, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Janania.

Dated: 1-4-15, 2015



John A. D'Anna, M.D.